



Nebraska Resources

Newsletter

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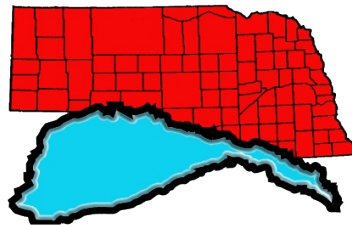
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SUMMARY OF REPUBLICAN RIVER COMPACT LITIGATION SETTLEMENT

On December 16, 2002 Governor Mike Johanns and Attorney General Don Stenberg announced that Nebraska reached an out-of-court settlement of the U. S. Supreme Court case, *Kansas v. Nebraska, Colorado*, concerning the Republican River Compact. The Compact, signed in 1943 by the three basin States, allocates the average annual water supply of the Republican River between the States of Colorado, Nebraska and Kansas. Under the Compact, a total allocation is given to each State to be derived from the listed tributaries, and for Nebraska and Kansas, from the mainstem of the Republican River. Each State is entitled to consume its allocation. The amount of water allocated between the States was determined using the annual average of the 1929-1940 stream flows in nine specifically identified tributaries, all other small tributaries and the mainstem of the Republican River.

In May, 1998 the State of Kansas filed a motion for leave to file a bill of complaint with the U. S. Supreme Court alleging that Nebraska violated the Compact "by allowing the proliferation and use of thousands of wells hydraulically connected to the Republican River and its tributaries, by the failure to protect surface flows from unauthorized appropriation by Nebraska users, and by other acts and omissions."⁽¹⁾ On January 19, 1999 the Court granted Kansas leave to file its bill of complaint.

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Water Well Registrations

By Susan France

In 2002, the Department registered a total of 7,922 water wells. This included 1,901 domestic wells, 1,891 irrigation wells, 1,808 monitoring wells, and 1,151 stock wells. Other types of wells registered are aquaculture wells, commercial wells, heat pumps, injection wells, observation wells, public water supply wells, recovery wells, dewatering wells, injection wells, and others.

All wells are required by law to be registered except the following:

1. Test Holes
2. Dewatering wells in existence for less than 90 days
3. Domestic (includes stock wells) drilled **prior to September 9, 1993**

Nebraska statutes state, "Except for water wells which are used solely for domestic purposes and were constructed before September 9, 1993, and for test holes and dewatering wells used for less than ninety days, **each water well which was completed in this state before July 1, 2001, and which is not registered on that date shall be an illegal water well until it is registered with the Department of Natural Resources.**" For wells drilled on or after July 1, 2001, it is the water well contractor's responsibility to register the wells constructed by that contractor.

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Republican River Compact Continued from page 1

In June, 1999 the United States Supreme Court invited Nebraska to file a motion to dismiss the case on the question whether the Compact restricted the use of groundwater. Kansas argued that the Compact restricts all groundwater use. Nebraska argued that the Compact only restricts the consumption of water directly diverted from the streams. Colorado stated that the Compact restricts the pumping of alluvial groundwater, but not table-land groundwater. On November 15, 1999 the Court referred the matter to Special Master Vincent L. McKusick.

On January 28, 2000 the Special Master issued his First Report stating that the Republican River Compact restricts a compacting State's consumption of ground water to the extent that such consumption depletes stream flow in the Republican River Basin. Among the remaining issues in the case were: 1) Did Nebraska overuse water and if so, was Kansas entitled to any damages resulting from Nebraska's overuse of water; 2) Do the states have the flexibility to use the water allocated from one sub-basin in other parts of the state; 3) Is compliance based on an annual accounting of allocations and use or can it be based on an average over a number of years; 4) What is Kansas's entitlement to water at the Guide Rock diversion dam, which diverts water to the Kansas Bostwick Irrigation District; and 5) Can Nebraska receive credit for water imported into the basin as a result of the Central Nebraska Public Power and Irrigation District's and Nebraska Public Power District's projects. In May 2001 Special Master McKusick issued additional rulings, including a ruling that previous Compact Administration computations from 1959 – 1994, agreed to by all of the States, were binding on each State. Nebraska contended that those binding numbers did not support a claim for damages by Kansas.

Special Master McKusick's rulings helped set the stage the possibility of a negotiated settlement.

In October, 2001 the three States began settlement discussions. As a result of these initial discussions, Special Master McKusick postponed parts of the progression of the litigation until December 15, 2002 to allow time for continued settlement negotiations. The U. S. Department of Justice, U. S. Bureau of Reclamation and the U. S. Army Corps of Engineers also participated

in the settlement negotiations. Nebraska's settlement team consisted of David Cookson, Assistant Attorney General, and Roger Patterson, Ann Bleed and Jim Cook from DNR. The settlement team was assisted by a number of attorneys and consultants including Nebraskans Don Blankenau from the law firm of Fennemore Craig, Tom Riley from The Flatwater Group consulting firm and Derrel Martin from the University of Nebraska.

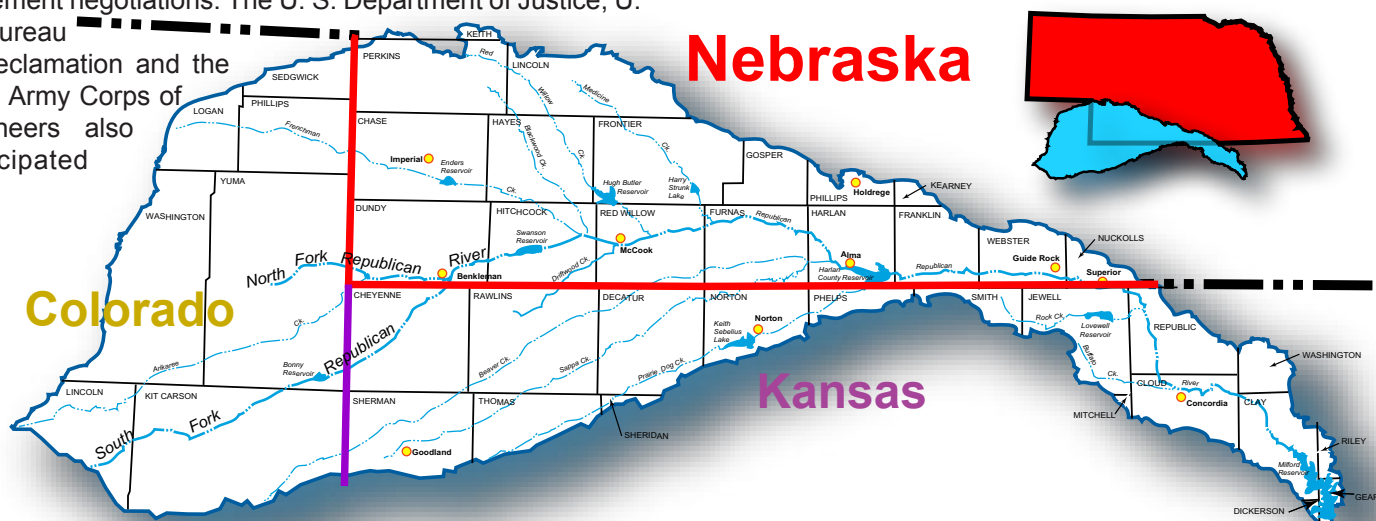
The seventeen months of negotiations, which took place mostly in Denver or Kansas City were intense and time consuming, but in the end the states achieved a settlement package that has been described as a win-win-win by all three states.

The Settlement Agreement substantially meets the key objectives Nebraska hoped to achieve at trial while avoiding the uncertainty and expenses that would be involved in protracted litigation. The Settlement Agreement:

1. Counts all ground water use that is determined to deplete stream flow as part of a States consumptive use;
2. Waives and forever bars all past claims for damages
3. Gives Nebraska the flexibility to use its allocation wherever it sees fit;
4. Increases flexibility further by measuring Compact compliance on a five-year running average, as opposed to annually, except in dry years when compliance is measured on a two or three-year running average basis.

The Compact has been administered by the Republican River Compact Administration, consisting of the State Engineers from Colorado and Kansas and the Director of the Department of Natural Resources in Nebraska, since the 1950s. The Settlement Agreement continues this administration. The Compact accounting in the past has included the consumptive use of water from surface water and alluvial ground water for irrigation, municipal and industrial uses as well as the evaporation from the Bureau of Reclamation reservoirs. These calculations will continue, but evaporation from

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New Officers Elected

At their annual organizational meeting held January 29th, 2003, members of the Nebraska Natural Resources Commission elected officers for the coming year. Elected to serve a one-year term as **Commission Chair was Roger Korell** of Bayard and elected as **Vice-Chair was Beverly Donaldson** of Omaha.

Governor Johanns appointed Roger in 1999 to represent the interests of Nebraska's surface water irrigators on the Commission. Roger is a retired farmer/cattleman who operated approximately 1700 acres near Bayard and is a Director of the Pathfinder Irrigation District.

Beverly is a retired primary school teacher with additional experience in the insurance and travel industries. She is a past Chair of the Papio-Missouri Tribes NRD Board and has served as Treasurer of the Nebraska Association of Resources Districts.

These two members will head the sixteen-member Natural Resources Commission which has broad responsibilities in soil and water conservation and development in Nebraska.

Tom Hayden Receives Headgate Award



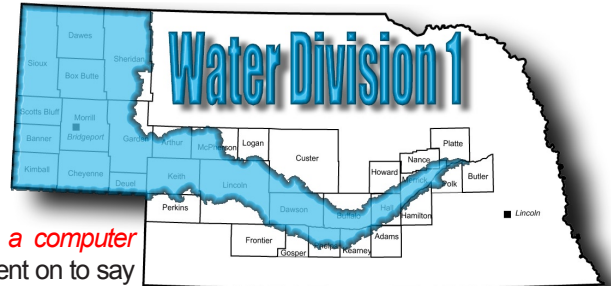
Pictured left to right are Tom Hayden, his wife Linda and Dennis Strauch with the Pathfinder Irrigation District.

Tom Hayden, Supervisor of Nebraska's largest water division, Water Division 1, was this year's recipient of the **Four States Headgate Award**. The prestigious award, presented by the Four States Irrigation Council recognizes one individual from Wyoming, Colorado, Kansas or Nebraska for their outstanding service to irrigators.

Tom has worked with the Department in water resources management for over 30 years. Division 1 covers a large area from the NE/WY state line to the Grand Island area in central Nebraska (please see map). Within that area are several hundred thousand surface irrigated acres and approximately 1,700 surface water rights. Also within that area are the North Platte, South Platte and Platte River. Tom's knowledge and expertise on the Platte River system was vital to the state in the NE v. WY lawsuit, the settlement provisions, and continues with monitoring compliance of the compacts.

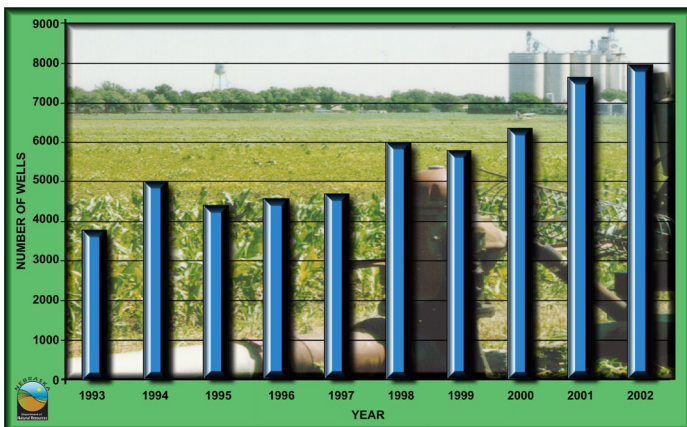
During the award presentation, Dennis Strauch, with the Pathfinder Irrigation District, made the comment *"Tom's knowledge of the North Platte and Platte River system is phenomenal, he is like a computer model without the computer"*, he went on to say *"I admire Tom for his willingness and dedication to help people, it doesn't matter if you need help with a permit, a map, a flow measurement or help to resolve a dispute between two water users, Tom is always willing to lend a hand"*.

The Department of Natural Resources is very fortunate to have Tom Hayden and people like him working for the benefit of Nebraska's resources and citizens. Congratulations Tom.



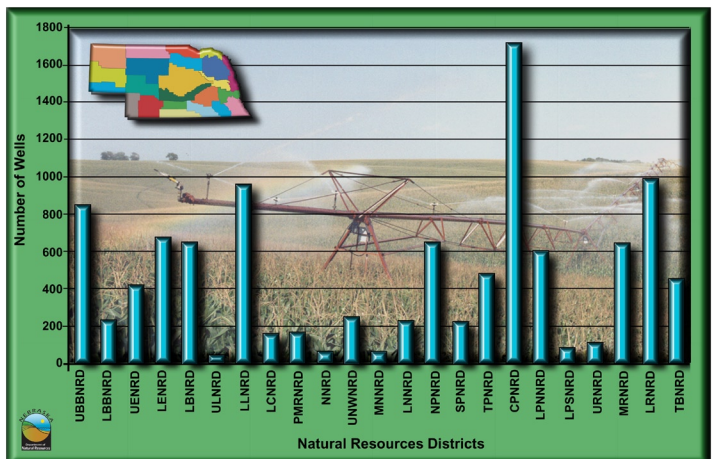
Water Well Registration Continued from page 1

Total Number of Wells Registered by Year



Registered Irrigation Wells Between 1993 and 2002 by NRD

(excludes replacement wells)



Of the 7,922 wells registered in 2002, approximately 20 percent were wells that should have been registered in previous years. The Department maintains a web site for individuals to check the registration of their wells. The web site allows for anyone to look a well up by registration number, name of owner, or by legal description. This site is updated daily and can be found at

<http://dnrserver26.dnr.state.ne.us/wells/wellsindex.asp>

Watershed Tracts Sold at Public Auction

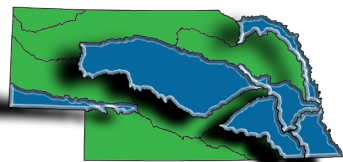
By Tom Pesek



Two tracts of land associated with **Site 3 of the Middle Big Nemaha Watershed** near St. Mary were sold at public auction on January 8, 2003. Jack Bernard of Auburn conducted the auction which was held at the Nemaha NRD office in Tecumseh.

The 160-acre tract includes 65 acres of cropland, 30 acres of CRP, 12 acres of prairie, and 21 acres of conservation pool along with the dam and emergency spillway. It brought a high bid of \$990/acre. The 80-acre tract had a high bid of \$1,230/acre. This tract includes 22 acres of cropland, 29 acres of CRP, and 15 acres of conservation pool. Both tracts were purchased by farmers who own and operate adjoining property.

The Commission approved the high bids at its January 29th meeting. The proceeds from the sale will be returned to the Small Watersheds Flood Control Fund to assist sponsors of future flood reduction projects with the acquisition of necessary land rights, either by easement or fee title.



SIX RIVER BASIN CAUCUSES HELD

Six river basin caucuses were held in January this year to select seven members of the Natural Resources Commission (NRC), six incumbents were selected and one new member was selected to four-year terms.

The newly selected member is N. Richard Hadenfeldt of Dannebrog who will represent the Loup River Basin. Richard is Chairperson of the Lower Loup NRD Board and a Howard County farmer who previously worked for the Soil Conservation Service (Natural Resources Conservation Service) as an engineer. Richard replaced long-time NRC member Frank Bartak who choose not to run again having served on the NRC as the Loup River Basin representative since 1983. The Department of Natural Resources staff and members of the NRC wish to welcome Richard and look forward to working with him in the coming years. We would also like to thank Frank for his many years of dedicated service to Nebraska and its citizens.

The seven NRC members selected and the basin they represent are:

Big Blue River Basin.....	Richard Jiskra
Loup River Basin.....	N. Richard Hadenfeldt
Lower Platte River Basin.....	Clinton Johannes
Missouri Tribs River Basin.....	Beverly Donaldson
Missouri Tribs River Basin.....	Vincent Kramper
Nemaha River Basin.....	Dan Watermeier
South Platte River Basin.....	Robert Hahn

The Nebraska Natural Resources Commission (NRC) consists of 16 members. Three of the members are appointed by the governor and represent the specific resource interests of municipal water users, surface water irrigators and ground water irrigators. The remaining thirteen members are selected to four-year terms at caucuses of Natural Resources District (NRD) Directors held in Nebraska's river basins.

CARC Update

By Steve Soberski

LB 274 Created the **Climate Assessment and Response Committee (CARC)** in 1992. The Director of the Department of Natural Resources is one of the Governor's Appointments to this committee. The Department of Natural Resources also is represented on the Agricultural, Natural Resources, and Wildlife Subcommittee (Co-Chair) and participates as a member of the Water Availability and Outlook Committee.

CARC was very active in 2002 due to severe drought conditions existing across much of the state. Western Nebraska was particularly hard hit by the lack of adequate precipitation during the growing season last year. Part of the responsibility of CARC is to provide timely climatic information to the Governor during extreme events like the drought conditions in 2002. This information is used to support requests for federal disaster declarations and to use the information so that other State agencies can respond to drought and other climate-related emergencies.

CARC held its first meeting this year on January 30, 2003. CARC sub-committees convened in the morning with the full CARC Committee meeting held in the afternoon. Reports by the State Climatologist Al Dutcher and Mark Svoboda of the UNL-National Drought Mitigation Center indicate that without a major shift in current weather patterns the current drought is likely to extend into 2003. Of major concern currently is the meager snowfall amount in Colorado and Wyoming. That snow and associated moisture is needed for surface water irrigators in western Nebraska this growing season.

Republican River Compact Continued from page 2

small reservoirs of 15 acre-feet or more and depletions to stream flow caused by all ground water use will now also be included in the calculations. The Settlement Agreement also provides that Nebraska will get credit for any water imported into the basin as a result of surface water projects on the Platte River. The inclusion of stream flow depletions resulting from groundwater use and credits from the Platte River ground water mound requires that the Compact Administration develop a basin-wide ground water model. The three States have agreed to complete an agreed upon groundwater model by July 1, 2003.

In water short years, those years in which the water supply for the Kansas and Nebraska Bostwick irrigation districts is expected to be less than 119,000 acre feet as projected by the Bureau of Reclamation, Nebraska will limit its consumptive use above the Guide Rock diversion dam to its allocation derived from above Guide Rock on a two or three year running average basis. In water short years, compliance for Kansas will also be based on a two-year running average. Colorado's compliance is always based on a five-year running average but in water short years, Colorado cannot use water allocated from Beaver Creek in another sub-basin.

Also in water short years, when the Bostwick irrigation districts supply is less than 130,000 acre feet to assure Compact compliance Nebraska has agreed to shut off all surface water users between Harlan County Lake and Guide Rock that are junior to April 1, 1948, the priority date of the Nebraska Courtland Canal. Nebraska will also protect any storage water released from Harlan County Lake from diversion by surface water users who do not have a contract for the storage water. Finally, in order to prevent further over-development in the basin, a moratorium on new well development is in place unless all three States agree that additional development is possible within a State's allocation.

It is expected that Nebraska should be able to maintain most, if not all, of its existing uses in normal years. In water short years, which occur 25% - 33% of the time, Nebraska will have to reduce consumptive use to stay in compliance with the Compact.

In addition, the Settlement Agreement includes provisions that lay out a dispute resolution process that the States hope will decrease the need for future litigation. The settlement also provides that the states and the U. S. Bureau of Reclamation will jointly study and, if possible, develop system improvements to make more efficient use of the water that is available in the basin. It also calls for a five year study of the impact of small ponds and terraces on stream flow. While all three States continue to agree not to include the consumptive use from these activities in Compact accounting, they agree that it would be useful to know how these activities impact the

basin's water supplies. A good portion of this study is to be funded by the federal government.

Under the Settlement Agreement, Compact compliance will first be measured in 2007, unless we have a water-short year, in which case compliance will start in 2006. This will give Nebraska time to implement new rules and regulations necessary for Compact compliance. It is important to note that the years counting toward the five-year running average that starts counting in 2007 include 2003.

Although the Settlement negotiations were difficult, in many ways the really hard work of implementing the settlement is yet to come. Nebraska, through DNR and the Republican River Basin Natural Resource Districts, will be responsible for collecting its portion of the necessary data for Compact accounting. DNR will also be responsible for regulating surface water uses and protecting storage water from illegal diversions. A significant portion of the new Compact implementation responsibilities will fall to the Republican River Basin Natural Resources Districts. The Upper, Middle, and Lower Republican NRDs have already implemented moratoriums on new wells (2) and are

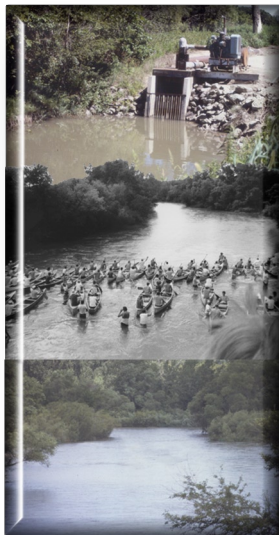
in the process of working with DNR to develop integrated surface and ground water management joint action plans. The NRDs and DNR will have to work closely to coordinate the joint regulation of surface and ground water uses. The NRDs will need to identify and certify the number of acres currently being irrigated by wells. To accurately measure use, all wells need to be metered and the NRDs will make sure the meter data is accurate. Finally, the NRDs will enforce their joint action groundwater management plans to insure that ground water users use only the water allowed under the management plan. Finally, the NRDs and DNR will work together to gather the significant amount of ground water data needed to assure the greatest possible accuracy from the Republican River ground-water model.

The implementation of the Settlement Agreement will require Nebraska to fund activities necessary to keep Nebraska in Compact compliance. For this reason, DNR has asked the Legislature to provide additional money to carry out the requirements of the Settlement Agreement. A good portion of this money will be earmarked to the NRDs for meters and additional staff. The remainder will go to DNR for work on the ground water model and other studies, gaging equipment and additional staff needed for data collection and analysis and Compact enforcement.

(Footnotes)

(1) 1 Kansas Bill of Complaint ¶ 7 (Docket Item 1).

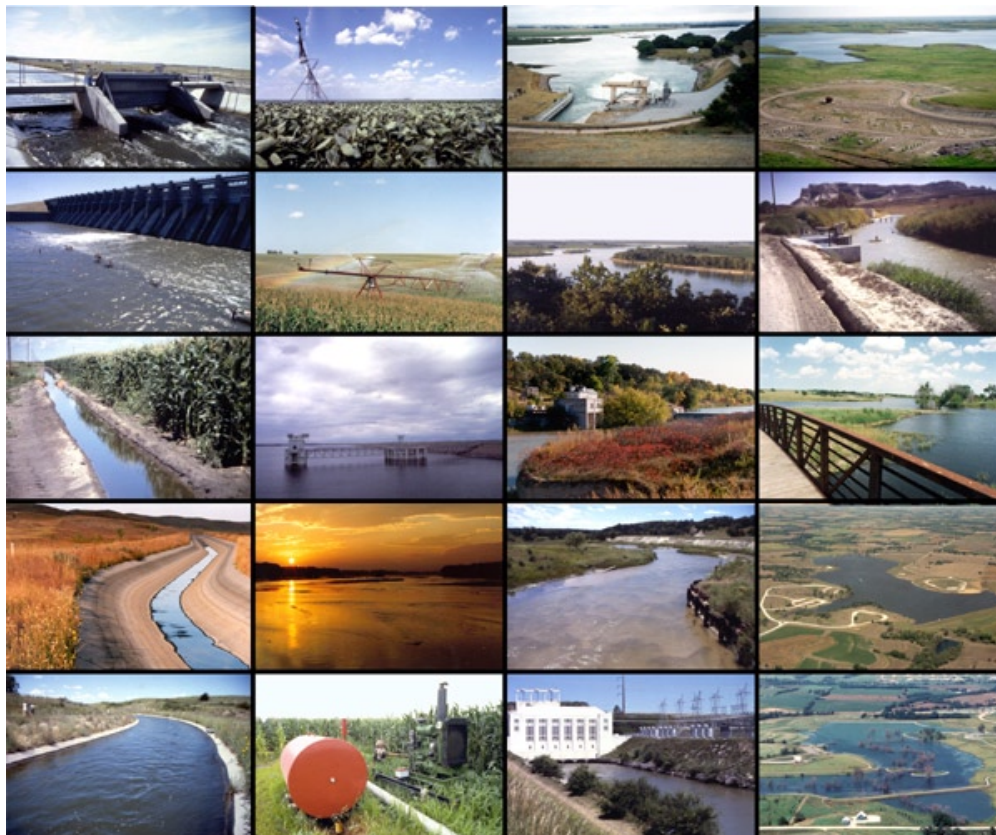
(2) Tri-Basin is not required under the Settlement Agreement to implement a moratorium.



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State of Nebraska

Mike Johanns, Governor

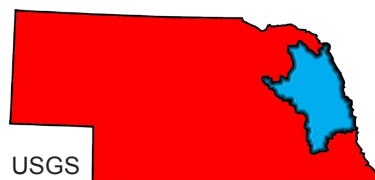
Nebraska Department of Natural Resources

Roger K. Patterson, Director

The *Nebraska Resources* is a quarterly publication of the Nebraska Department of Natural Resources and is edited by Terry L. Cartwright, Public Information. Your comments and or suggestions are welcomed.

NHD Update

By Josh Lear



The Planning and Assistance Division and USGS have successfully completed high-resolution National Hydrography Datasets (NHD) for the Salt-Wahoo and Lower Elkhorn hydrologic units (HUCs). These projects were funded by grants from the Nebraska Information Technology Commission's Community Technology and Government Collaboration Technology funds respectively. Under the agreement, Planning and Assistance prepared the preliminary stream data and USGS completed the processing to produce NHD. Four additional HUCs, Lower Platte, Lower Platte-Shell, Papio, and Blackbird-Soldier were added to the workshare agreement with USGS for a total of six. Planning has completed its obligation under the agreement using 106 and 319 funds provided by the Nebraska Department of Environmental Quality and additional support from the Conservation and Survey Division at UNL. At this writing, the Lower-Platte-Shell Creek is available at the NHD website nhd.usgs.gov in addition to Salt-Wahoo and Lower Elkhorn. The Logan Creek HUC, developed as a pilot project, is also available.

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Nebraska Department of Natural Resources....

....dedicated to the sustainable use and proper management of the State's natural resources.